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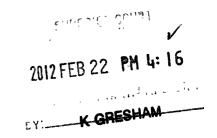
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SHEILA POLK, COUNTY ATTORNEY JEFFREY G. PAUPORE, SBN 007769 STEVE A. YOUNG, SBN016838 **Deputy County Attorney** YCAO@co.yavapai.az.us Attorneys for STATE OF ARIZONA



## IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

VS.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S MOTION IN LIMINE RE: **JAMES KNAPP** 

Assigned to Hon. Gary Donahoe

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned moves this court In Limine under Arizona Rules of Evidence ("ARE") Rules 401, 403 and 404(b) to preclude at trial documents or references about James Knapp's ("Knapp") involvement in two check schemes. On July 21, 2011, the State filed a motion in limine to preclude evidence of Knapp's character and suicide. The motion about the death of Knapp was denied without prejudice on December 22, 2011. The instant motion is specifically directed at two events not addressed before. This motion is supported by the following memorandum of points and authorities.

## MEMORANDUM OF POINTS AND AUTHORITIES

In August 2007 Knapp filed a complaint with Prescott Police Department about being swindled out of \$13,000. In July, Knapp responded to emails from Larry Smith, allegedly a British

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255 E. Gurley Street, Suite 300 Prescott, AZ 86301 Phone: (928) 771-3344 Facsimile: (928) 771-3110 National, who advised Knapp he had inherited \$50,000,000 from Brian Smith, supposedly Knapp's "long lost" next of kin. Mr. Smith offered to assist Knapp in getting his money but needed \$13,000 to pay taxes to the Inland Revenue Service in Hong Kong. Knapp wired \$13,000 using a Wal Mart money gram to Ajax, Ontario, Canada on August 13, 2007 and never heard from Larry Smith again.

A subpoena duces tecum dated May 28, 2010 was served on Bank of America by the previous defense attorney John Sears. The subpoena produced Knapp's bank statement and canceled check from his "holding account" ending in 0622. The bank statement shows a check deposited by Mr. Knapp on May 2, 2008 from Ajax Tacco Magnethermic Corporation ("Ajax") in the amount of \$82,825.00. This check was returned on May 7, 2008 and the bank closed Knapp's account. The Defendant has listed Ajax's custodian of records as a witness in this case.

Russell Horner, Ajax's Director of Internal Audit, investigated this check and many other forged checks in 2008. The investigation revealed Ajax and 29 persons including Knapp were victims of a check scam.

Mr. Horner learned a blank company check with legitimate signatures and bank routing numbers was stolen and scanned into a computer. The thief(s) made counterfeits of this check and made them payable of gullible targets. The checks were mailed to people thorough out the United States. Some recipient's of the letter attempted to cash the fake check. Knapp received an Ajax counterfeit check in the amount of \$82,500.00 and deposited it into his bank account. There is no evidence Knapp was a part of the theft of the original Ajax check. No checks were successfully cashed, Ajax suffered no loss and no criminal complaint was filed.

## LEGAL ARGUMENT

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Rule 404(b) permits other act evidence so long as it is offered for any relevant purpose but the evidence cannot be admitted where it is only offered to prove the character of a witness. As noted by Judge Livermore in his revision of Udall's text on evidence:

"The general rule is easy to state: Evidence of other crimes is admissible when it is offered for any relevant purpose other than to prove the character of a person." Udall and Livermore, Ariz. Practice: Law of Evidence, Section 84 at page 178 (Second Edition, 1982).

Any evidence related to Knapp's involvement in the two check schemes is inadmissible character evidence. It has no relevance in proving Knapp was involved in the murder of Carol Kennedy.

If the Court decides this evidence is relevant, it should be precluded as inadmissible hearsay and or prejudicial pursuant to Rule 403. "Relevant evidence may be excluded, however, 'if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading to the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.' *Ariz. R. Evid.* 403." *State v. Connor*, 215 Ariz. 553, 562, 161 P.3d 596, 605 (App. 2007).

Evidence in this case of Knapp's involvement in the two check schemes is intended to paint him as a crook or a thief. This character evidence, if admitted presents a danger of unfair prejudice, confusion of the issues and could mislead the jury. These schemes happen to all sorts of people but should not be used to impose a "mark of shame" against Knapp.

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1	RESPECTFULLY SUBMITTED this 22 day of February, 2012.
2	Sheila Sullivan P <del>olk</del>
3	YAVAPAI COUNTY ATTORNEY
4	By: Jeffrey G. Paupore
5	peputy County Attorney
6	COPY of the foregoing emailed this day of February, 2012, to:
7	Honorable Gary Donahoe
8	Division 1
9	Yavapai County Superior Court Via email to: gdonahoe@courts.az.gov
10	Division 1
11	Via email to: Cheryl Wagster: <u>CWagster@courts.az.gov</u>
12	Craig Williams
13	Attorney for Defendant P.O Box 26692
14	Prescott Valley, AZ 86312 Via email to: <a href="mailto:craigwilliamslaw@gmail.com">craigwilliamslaw@gmail.com</a>
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